A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition No. 3624 of 2006

PETITIONER	:	Kumari Vandana Gupta, age 19 years D/o Shri Mahesh Gupta, R/o At –post Pendra Tahsil Pendra Road, District Bilaspur (C.G.)

VERSUS

RESPONDENTS	1.	State of Chhattisgarh, Through: The Secretary, Local Self Government and Urban Administration Department, D.K.S. Bhawan Raipur (C.G.)
	2.	The Nagar Panchayat Pendra, District Bilaspur C.G. through its Chief Municipal Officer

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Present: Shri Rajesh Pandey, learned counsel for the petitioner.

Shri Prashant Mishra, learned Addl. A.G. with Shri Sumesh Bajaj, learned Dy. G.A. for the State/ respondent No. 1.

ORAL ORDER
(Passed on 21st July, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ .

The petitioner in this writ petition is one Kumari Vandana Gupta. The date of birth of the petitioner is 17-07-1987. The petitioner has passed 12th class examination (10+2) in the year 2005 with distinction securing 84% of marks conducted by the C.G. Board of Secondary Education, Raipur.

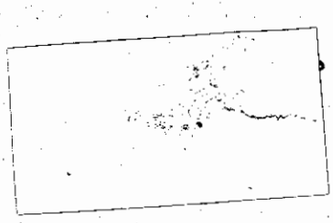
2. In this writ petition, the petitioner has challenged the constitutional validity of the age qualification of 21 years prescribed for the post of

Shiksha Karmi Grade-III under the M.P. (now C.G.) Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998 (for short "the Rules") as amended vide Notification No. F.4-917-98-1, dated 17-09-1998.

3. The erstwhile undivided State of Madhya Pradesh in exercise of powers conferred by Section 433 read with Section 58 of the Madhya Pradesh Municipal Corporation Act, 1956 and Section 355 read with Section 95 of the Madhya Pradesh Municipalities Act, 1961 framed the Rules. In the original Rules, age limit of 18 years was prescribed as the minimum age for the post of Shiksha Karmi Grade-III. However, by way of amendment vide Notification No. F.4-917-98-1, dated 17-09-1998, the minimum age limit was raised to 21 years.

4. The constitutional validity of the amended provision is questioned on the ground that though the Government has not amended the educational qualifications prescribed for the post of Shiksha Karmi Grade-III, it has chosen to raise the minimum age to 21 years for the said post without any reason and rhyme. In other words, according to learned counsel for the petitioner, the impugned provision is arbitrary, unreasonable and violative of Article 14 of the Constitution. At the same time, it is also casually asserted that the impugned provision is also violative of Articles 16, 19 (1) (e), 21, 38 and 41 of the Constitution of India without anywhere elaborating how those Articles are violated.

5. We have heard Shri Rajesh Pandey, learned counsel for the petitioner and Shri Prashant Mishra, learned Addl. Advocate General for the State.



6. Shri Rajesh Pandey, learned counsel for the petitioner contended that under the unamended provision the petitioner would have applied for the post of Shiksha Karmi Grade-III, but, having regard to the amended provision she is ineligible to apply for the post of Shiksha Karmi Grade-III. It was contended that though the petitioner has acquired the prescribed educational qualifications, she is ineligible to apply for the post because of the amendment enhancing the minimum age to 21 years from 18 years. It was submitted that the petitioner in order to apply for the post of Shiksha Karmi Grade-III has to wait for 2-3 years though right now she has acquired the prescribed qualifications for the said post. On these reasons, Shri Rajesh Pandey, learned counsel for the petitioner would contend that enhancing the minimum age from 18 years to 21 years is unreasonable, arbitrary, discriminatory and liable to be declared as invalid on the touchstone of Article 14 of the Constitution of India.

7. Shri Prashant Mishra, learned Addl. Advocate General, *per contra,* would contend that prescribing qualifications, such as minimum and maximum age, educational qualifications, experience a candidate should possess is the exclusive power of the Government and the policy decision taken by the Government to prescribe the minimum age of 21 years could not be interfered with. Learned Addl. Advocate General would also contend that what Article 16 (1) read with Article 14 of the Constitution of India guarantees is right to apply and to be considered for appointment to a public post or office if a candidate possesses the prescribed qualifications and not appointment to the public post. Learned Addl. Advocate General would conclude that the petitioner has utterly failed to make out any ground to declare the impugned provision as invalid.

8. Before us it was not contended by Shri Rajesh Pandey, learned counsel for the petitioner that delegation of legislative power conferred on the State Government under Section 433 read with Section 58 of the M.P. Municipal Corporation Act, 1956 and Section 355 read with Section 95 of the M.P. Municipalities Act, 1961 suffers from 'excessive delegation', but , his specific contention is that though the Parent Acts may not be *ultra vires* the Constitution, the impugned provision violates the right guaranteed to the petitioner under Article 16 (1) read with Article 14 of the Constitution. Although, a delegated legislation like the one impugned in this writ petition could be assailed on various grounds, such as, the Parent Act itself is *ultra vires* the Constitution; it is *ultra vires* the Parent Act in the sense that it is in excess of the power conferred by the Parent Act or that it is in conflict with the Parent Act or that it is in conflict with the prescribed procedure laid down in the Parent Act or that it is unreasonable, arbitrary, discriminatory etc, in view of the contention raised by Shri Rajesh Pandey, learned counsel for the petitioner, the only thing to be seen in this case is whether the impugned provision is *ultra vires* the Constitution in the sense that it violates the right guaranteed to the petitioner under Article 16 (1) read with Article 14 of the Constitution of India and whether it is unreasonable, arbitrary and discriminatory.

9. It is true that Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or any other employment under the State. Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. What Clause (1) of Article 16 of the Constitution of India guarantees is an equal opportunity to all citizens to apply for employment under the State. In other words, what Article 16 (1)

guarantees is an equality of opportunity and not any right to be appointed to the post for which he applies or any other post under the State. Even right to apply and to be considered for appointment to the public post could be conditioned by the State by laying down the qualifications. Therefore, a citizen who does not possess the prescribed qualification under the Rules is not entitled to apply and to be considered to a post advertised. Minimum and maximum age has been prescribed by the State in the Rules governing recruitment to public posts. Nobody can question the power of the State to prescribe minimum and maximum age limit for any public post as they prescribe other qualifications, such as educational qualifications, experience qualifications etc. for appointment to public posts.

10. The impugned provision is enacted by the State Government in exercise of the delegated power. It is solely for the statutory delegate to consider as to when and in respect of what subject matter the Rules are to be enacted and amended. There is no provision either in the Constitution or in the Parent Act which permits the Court to direct or advise the statutory delegate in the matters of policy or to sermonize *qua* any matters which fall within their legitimate domain of rule-making power provided the statutory delegate keeps itself within its constitutional and statutory limits.

11. It is well settled that it is for the rule-making authority or for the Legislature to regulate the method of recruitment, prescribe qualifications etc. This is not the province of the Court to trench into and prescribe or vary qualifications, in particular, when the matters are of policy decision or technical nature. Generally speaking, it is not for the Court to consider relevance of qualifications prescribed for the various posts to be filled up

by the State. The Court is not entitled to sit in judgment over the policy decision taken by the rule-making authority unless it is shown that such policy decision is *ex facie* arbitrary and discriminatory. If the rule-making authority is of the opinion that a person who is going to be appointed as Shiksha Karmi Grade-III should be matured enough to deal with young children, impart proper education and therefore, thought it appropriate to raise the minimum age from 18 years to 21 years, its policy decision cannot be condemned as absurd and senseless so as to attract the wrath of Article 14 postulates. The minimum age qualification prescribed under the impugned provision based on a policy decision of the State cannot lightly be interfered with by the Court in the premise of the subjective perception of the Court with regard to reasonableness or in the premise of the perception of the petitioner in that regard or on the ground that though the petitioner has acquired prescribed educational qualifications she is not eligible to apply for the post of Shiksha Karmi Grade-III right now. Service Rules are not enacted or framed by the Legislature or the Executive Government, as the case may be, keeping in mind an individual applicant who may apply for the post, but, to give opportunity to all similarly circumstanced persons to apply for appointment to public posts and to regulate terms and conditions of various services under the State.

12. The principle of equality enshrined in Article 14 of the Constitution of India does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. What Article 14 mandates is that there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same. In other words,

its action must not be arbitrary, but, must be based on some valid principle which itself must not be irrational or discriminatory. There is no reason to condemn the impugned provision raising the minimum age to 21 years as discriminatory simply because in view of the said minimum age qualification, the petitioner is not entitled to apply for the post of Shiksha Karmi Grade-III. What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the Legislature or the delegate of the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a "*well-defined class*", it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. Persons like the petitioner who have acquired prescribed educational qualifications, but, who are below 21 years of age and others who have acquired prescribed educational qualifications, but, who are of 21 years of age cannot be grouped together for appointment, and all of them could not be regarded as the persons belonging to a "*well-defined class*" for the purpose of applying equality clause.

13. Thus, looking from any angle the petitioner has utterly failed to make out any ground whatsoever to declare the impugned provision as unconstitutional. The writ petition fails and it is accordingly dismissed, however, with no order as to costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge

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